# In re Interest of Darryn C.

**Caselaw No.**
295 Neb. 358
**Filed on**
Friday, December 16, 2016

**SUMMARY:** Sharon J., the paternal grandmother of Darryn C. appeals a juvenile court order overruling her motion for custody of Darryn and further ordering home studies on her two residences.

Darryn was adjudicated in the Douglas County separate juvenile court pursuant to § 43-247(3)(a) based on admissions by his biological mother concerning her alcohol and substance use, as well as his biological father?s admissions of domestic violence against Darryn?s mother. Darryn had already been removed from the home, placed with a nearby relative, and was in the custody of DHHS. Three weeks later in December 2013, Sharon filed to intervene and requested that Darryn be placed with her. The intervention was allowed but placement was not because the permanency objective was reunification and Sharon lived more than four hours east of Omaha in Iowa.

A month later the permanency objective was changed from reunification to reunification concurrent with adoption, as well as ordered psychological evaluations and therapeutic services. A review hearing followed six months after that permanency objective change during which it was revealed by Darryn?s therapist via the GAL that, according to Darryn, Sharon had often taken him to see his parents despite the court having ordered no unsupervised visits with them and a prohibition from both parents visiting with Darryn simultaneously. Darryn?s parents and Sharon denied these claims. The GAL also expressed concern with Darryn?s obsession with superheroes and violent play beyond what was considered normal for a six-year-old, which was also corroborated by Darryn?s therapist. Specifically, the therapist said that Sharon nor Darryn?s parents took the obsession seriously despite her assessments that Darryn?s aggression being ?off the charts.?

Later hearings also saw the juvenile court remind the County Attorney of its obligation to file a motion for termination of parental rights where a child was in an out-of-home placement fifteen of the previous twenty-two months and that Darryn was now at twenty-one months out-of-home. As a result, the State filed a TPR motion. Consequently, Sharon filed a motion for custody after Darryn?s parents agreed to relinquish custody of Darryn to her. Sharon?s husband, Darryn?s grandfather, also filed a motion to intervene. Sharon?s motion was objected to by the State, GAL, and DHHS.

During Sharon?s custody motion, she pointed out that she had moved to the Omaha area to be closer to Darryn, that Darryn?s parents were willing to relinquish custody to her, and that her husband was also on board with the plan, as well as wanting to proceed with adoption. Darryn?s therapist testified and that, despite citing Darryn?s preference to stay in his current placement, his grandparents would also be a suitable placement option. The lower court eventually overruled the Sharon?s motion for custody and ordered home studies of the grandparents? residences which is the basis for Sharon?s appeal here claiming that the voluntary relinquishment by Darryn?s parents should have given her custody under the parental preference doctrine.

In its analysis, the Supreme Court first looked at whether the order being challenged is a final appealable order and if Sharon had standing to appeal. For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the court from which the appeal is taken. An order in juvenile court is final and appealable if it affects a substantial right. A substantial right is affects if the order affects the subject matter of the litigation. Whether a substantial right has been affected by an order in the juvenile court litigation is dependent upon both the object of the order and the length of time over which the relationship with the juvenile may reasonably be expected to be disturbed.

That said, the Supreme Court turned its focus on whether changing the permanency objective from one objective to another is representative of a final appealable order. In the recent case In re Interest of Levanta S., the Court held that in the context of children adjudicated under (3)(a), an order is not a final, appealable order unless the parent?s ability to achieve rehabilitation and family reunification has been clearly eliminated. Likewise, the Court also sees the inquiry into Sharon?s custody motion as one to determine if the order eliminated Sharon?s ability to gain custody of Darryn.

The Court concluded that closer inspection of the order by the juvenile court revealed that it does not actually diminish Sharon?s ability to obtain placement or custody, but instead simply requires further home studies. This indicated that the lower court is still considering Sharon as a placement for Darryn and statement made by the court during the hearing support as much. Therefore, the Supreme Court concluded that the challenged order is not a final appealable order and the Supreme Court lacks the jurisdiction to proceed further. Thus, Sharon?s appeal was dismissed.

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